

December 6, 2013

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative related to the possession and sale of firearms (A.G. File No. 13-0031).

Background

Federal Firearm Laws. The Second Amendment of the U.S. Constitution guarantees the right of citizens to keep and bear arms. While the Second Amendment confers specific rights regarding the right to bear arms, the courts have allowed federal, state, and local governments to establish prohibitions and restrictions on firearm ownership. For example, a number of existing federal laws regulate the possession of firearms, such as by requiring dealers to register with the federal government, placing restrictions on shipping and transporting firearms, and prohibiting firearms in school zones.

In addition, existing federal law restricts the possession of firearms by certain individuals. For example, federal law prohibits individuals who are under the age of 21 from possessing handguns and those who are under the age of 18 from possessing rifles. Moreover, federal law prohibits felons, individuals convicted of domestic violence, and certain drug users from possessing firearms. Federal law also prohibits other specified persons (such as noncitizens and individuals with certain serious mental health diagnoses) from possessing firearms. Additional federal laws restrict the possession of certain firearms and ammunition. For example, federal law restricts the possession of armor piercing ammunition and requires an extensive regulatory process to purchase specified firearms.

State and Local Firearm Laws. Like federal law, existing state law prohibits certain individuals from possessing firearms. For example, individuals convicted of felonies and certain misdemeanors are prohibited from possessing firearms either for life or for specified periods of time. Additionally, certain individuals with serious mental health problems, mentally disordered sex offenders, and individuals subject to a protective or restraining order are prohibited from possessing firearms.

Current state law also imposes additional restrictions on the types of firearms and ammunition that individuals may possess. For example, state law generally bans the possession of firearms defined to be assault weapons and the use of lead ammunition for hunting. (We note, however, that certain firearms defined under state law as assault weapons are not prohibited under existing federal

law.) State law also specifies the conditions under which firearms may be transported and stored, and limits where firearms may be carried. In addition, local governments can enforce additional firearm-related restrictions. For example, the county of Los Angeles recently banned the possession of high-capacity magazines.

State and Local Regulation and Enforcement. Under current state law, in order to purchase a firearm, individuals must pass a background check administered by the California Department of Justice (DOJ) and wait ten days for the background check to occur. The DOJ background check system searches various federal and state databases (such as the California Mental Health Database and the Automated Criminal History System) and uses such information to determine whether the individual is eligible to purchase firearms under state and federal law. Individuals are generally required to pay \$25 in fees when purchasing a firearm, which helps support the regulatory and enforcement activities carried out by DOJ and other state and local entities. Currently, DOJ keeps registries of assault weapon and handgun purchases. Beginning on January 1, 2014, DOJ will begin keeping a registry of all other firearm purchases.

Currently, law enforcement officers are authorized to seize firearms under various conditions. For example, law enforcement officers may seize a firearm when (1) allegations of abuse or domestic violence have been made against an individual, (2) a firearm has potentially been involved in a crime, or (3) an individual is suspected of possessing the firearm illegally. Under such circumstances, the seized firearm may be returned to the owner no earlier than 48 hours after seizure and no later than five business days after the owner has completed documentation to retrieve the firearm. In addition, DOJ uses the Armed and Prohibited Persons System database to identify individuals who, subsequent to purchasing a firearm that was registered with DOJ, become ineligible to possess a firearm. Once these individuals are identified, law enforcement may seize the firearms they possess.

Under existing state law, county sheriffs and local police chiefs *may* issue a license to carry a concealed firearm to an individual who applies for such a license and provides proof of (1) good moral character; (2) good cause for the license; (3) residence or, under specified circumstances, employment in the jurisdiction; and (4) completion of a certified firearms training course. Currently, information on individuals with concealed weapons permits is maintained by the issuing agency and is publically available.

Proposal

This measure amends the California Constitution to state that “individuals have the right to acquire, possess, transport, transfer, and use firearms for lawful purposes that include hunting, sports shooting, and for the common defense of self, family, home, and property.” In addition, the measure specifies that existing state laws that are in conflict with the provisions of the measure shall be void. As we discuss below, the measure would effectively limit the ability of state and local governments to regulate and restrict firearms, ammunition, and accessories.

Expands Eligibility for Firearm Possession. Overall, the measure would expand the number of individuals who may legally possess firearms. For example, the measure would enable individuals convicted of certain misdemeanors to possess firearms. However, the measure specifies that the state could still prohibit or regulate the ownership of firearms by, or the sale or transfer of firearms to, felons, individuals determined to be a danger to self or others due to mental illness, and mentally disordered sex offenders.

Limits Restrictions on Firearms, Ammunition, and Accessories. The measure explicitly prohibits state and local governments from placing certain restrictions on certain types of firearms, ammunition, and accessories. For example, the measure specifies that, unless required by federal law, state and local governments generally cannot restrict the possession, sale, or transfer of certain assault weapons. In addition, the measure prohibits state and local governments from regulating or banning ammunition. However, the measure does allow restrictions on the use of lead ammunition within habitat of the California condor and ammunition restricted by the federal government (such as armor piercing bullets). The measure also prohibits the state from restricting the sale of magazines and clips not prohibited by federal law. Finally, depending on the manner in which the measure is interpreted by the courts, it may also have the effect of legalizing all firearms currently not restricted under federal law.

Other Changes. This measure also makes various changes to state law regarding the following:

- ***Charges Applied to Firearm-Related Purchases.*** The measure prohibits state and local governments from imposing any charge on the purchase of firearms, ammunition, or accessories except statewide sales taxes. The prohibition would apply whether the charge is payable to a governmental entity or a third party. Accordingly, this would eliminate local sales taxes and the \$25 in fees that are currently applied to firearm purchases.
- ***Concealed Firearms.*** The measure prohibits the state from imposing a total ban on the carrying of concealed weapons. It also prohibits state and local governments from releasing the personal information of concealed firearm permit holders.
- ***Firearm Registries.*** This measure prohibits state and local governments from requiring firearm or firearm owner registration, except as required by federal law. Accordingly, DOJ would no longer be able to keep or maintain its firearm registration databases. In addition, the measure prohibits state and local governments from requiring registration or fingerprinting for the purchase or transfer of ammunition or accessories.
- ***Firearm Seizure.*** This measure would limit the ability of law enforcement to temporarily seize firearms. Specifically, law enforcement officers would only be able to seize firearms when there are allegations of domestic violence or when individuals are taken into custody or evaluated for a mental disorder or illness. Firearms seized due to allegations of domestic violence would have to be returned within 72 hours. Firearms seized in circumstances related to mental disorders or illness could only be held for a reasonable amount of time to allow authorities to determine whether return of the firearms would be appropriate.

Fiscal Effects

The provisions of this measure would affect both costs and revenues for state and local governments. We describe the major fiscal effects below.

Effects on State and Local Revenues. As discussed above, the measure would prohibit state and local governments from imposing any charge on the purchase of firearms, ammunition, or accessories except statewide sales taxes. Thus, local governments would no longer be able to charge local sales taxes for firearms, ammunition, and firearms accessories. We estimate that this would reduce sales tax revenue received by local governments by several million dollars annually. The measure, however, would likely increase state sales tax revenue generated for the state by firearm-related purchases. This is because the measure (1) increases the number of individuals able to make firearms-related purchases; (2) increases the types of firearms, ammunition, and accessories that can be purchased; and (3) eliminates fees and local sales taxes associated with the purchase of firearms. The precise amount of additional state sales tax revenue that could be collected is unknown and would depend on choices made by consumers and how certain provisions of the measure are interpreted by the courts.

In addition, the measure would eliminate the \$25 in fees currently applied to firearm purchases, which would reduce revenue to state and local governments for various regulatory and enforcement activities related to firearms by around \$30 million annually. As we discuss below, while some of the activities currently supported by the fee revenue would be eliminated by the measure, other activities would still be required under existing state law if the measure was enacted.

Effects on Regulatory and Enforcement Costs. Overall, the provisions of the measure would reduce costs to state and local governments of carrying out certain regulatory and enforcement activities related to firearms that would no longer be permissible under the measure. For example, the measure would remove some of the restrictions on possessing certain firearms and prohibit the state from maintaining firearm registries (such as those that are accessed by the Armed and Prohibited Persons System administered by DOJ). At the same time, however, some of the other regulatory and enforcement activities currently funded by the revenue collected from the \$25 in fees applied to firearm purchases (such as background checks of individuals purchasing firearms) would still be required under existing state law if the measure was enacted. The precise cost of these activities is unknown and would depend on the manner in which the measure is interpreted and implemented.

Correctional Savings. The measure's provisions eliminating certain crimes—such as the possession of certain assault weapons, or the possession of firearms by certain individuals—would reduce state and local correctional costs. Although the precise effect would depend on the interpretation of the measure, state and local correctional savings could eventually exceed a couple million dollars annually.

Other Fiscal Effects. Research in other states has shown that the provisions related to firearm possession contained in similar measures can result in indirect savings and costs. On the one hand, savings could result from the potential reduction in crime due to the deterrent effect of a larger number of citizens possessing firearms for self defense. On the other hand, increased costs could result from injuries and death from increased firearms use. The net impact of these savings and costs is unknown.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary depending on the interpretation and implementation of the measure.

- Unknown increase in state sales tax revenue due to increased purchases of firearms, ammunition, and accessories. Reduction in local sales tax revenues of several million dollars annually due to the elimination of local sales taxes on firearm-related purchases.
- Reduction of around \$30 million in annual revenue from fees applied to firearm purchases for various firearm regulation and enforcement activities. Costs for some of these activities would still be incurred by state and local governments if the measure was enacted.
- Reduction in state and local correctional costs that could eventually exceed a couple million dollars annually.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance